IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.486 OF 1998

The Commissioner of Income-tax ..Applicant.

V/s.

M/s.Soth East Asia Shipping Co.Ltd. ..Respondent.

Mr.A.S.Rao for applicant.

CORAM : V.C. DAGA AND
J.P.DEVADHAR, JJ.

DATED : 28TH MARCH, 2005.

P.C. :-

1. In this reference, the questions referred for the opinion of this Court read as under :-

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the disallowance, in respect of payments to employee directors, should be made under the provisions of section 40(c) and not under the section 40A(5) of the Income-tax Act, 1961 ?
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> 2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the additional payments made to the floating staff during their particular period of service outside India cannot be taken into account for the purposes of disallowance

under section 40A(5) of the Income-tax Act, 1961 ?

2. So far as the first question is concerned, the same has been answered by the Division Bench of this Court in the case of **C.I.T. V/s. Hico Products Pvt.Ltd. (No.1) [(1993) 201 I.T.R. 567 (Bom.)]** in favour of the assessee and against the revenue. Whereas the second question has also been answered by another Division Bench of this Court in the case **C.I.T. V/s. Indo Oceanic Shipping Co. Ltd. [(2001) 247 I.T.R. 247 (Bom.)** in favour of the assessee and against the revenue.

3. In the above view of the matter, both the questions are answered in the affirmative i.e. in favour of the assessee and against the revenue. Accordingly, reference stands disposed of with no order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)